Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of	)	
	)	
Protecting the Privacy of Customers of Broadband and Other Telecommunications Services	)	WC Docket No. 16-106
	)	

REPLY COMMENTS OF MEDIAFREEDOM

Activist groups pushing for heavy-handed, public utility-styled Internet privacy regulations cry that FTC enforcement of Internet privacy – one which has successfully guided the Internet's development for ISPs and edge companies these past two decades – no longer works. For ISPs, that is. For companies like Google and Facebook – the most dominant and inescapable data Hoovers on the Internet – FTC enforcement remains OK.

Because the FCC now regulates ISPs as 19th Century public utilities, ISPs have a statutory duty in Section 222 of the Communications Act to protect the Internet privacy of their customers. The activist groups (as well as the FCC, apparently) believe this duty is so important that the Commission must quickly issue detailed rules to clamp down on the imagined possibility that ISPs will somehow harm consumers and violate their privacy. After all, they caterwaul, the FCC was given *a mandate* by Congress to do so.

MediaFreedom believes the exigent "mandate" to impose new detailed, industry-cleaving rules – especially when nothing is actually broken – is spurious. Yes, it is true that as long as ISPs are regulated as public utilities they have a statutory duty to protect the privacy of customer information (something they have always done even before Net Neutrality). It is equally true that the Commission has the discretion to issue privacy rules (as it has in the past) *if it so chooses. Importantly, however, Congress did not*

mandate in Section 222 that the FCC must issue any rulemaking / specific rules at all.

We know this because when Congress wants the FCC to write a specific rule, it instructs the Agency to do so. For example, if you look at a nearby section of the law passed at the same time as Section 222 – e.g., Section 224, which regulates Pole Attachments – Congress specifically wrote that the Commission shall come up with "rule regulations to carry out the provisions of [the] section." A similar directive – which appears throughout the Act for other statutory duties – is specifically missing in Section 222. Moreover, it is also absent in the '96 Act's Conference Agreement.

The upshot of this is that the Commission is not legally compelled by statute to issue the hyper-detailed privacy rules it has proposed. The Commission has ample authority to accomplish the goals of Section 222 without having to split the Internet ecosystem into two different privacy regimes – i.e., a strictly quarantined regime for ISPs; and a free-flowing agora for Google, Facebook and others. Nothing in the Act or law prevents less-restrictive approaches – such as emulating the successful pre-Title II, FTC approach to protecting Internet privacy – that serve the statute and the pubic interest. MediaFreedom urges such a less-restrictive approach.

MediaFreedom believes the current NPRM, with its so-called "traditional" model of privacy protection, does not fit with the marketplace and its use of dynamic, complex and converged communications networks. This mismatch undermines, not enhances, privacy protections for customers of broadband. The Commission should avoid further Balkanizing the Internet and refrain from imposing its anti-consumer, anti-competition and anti-innovation privacy proposal.

Respectfully submitted,

Mike Wendy
President, MediaFreedom.org
Alexandria, VA